

Explanatory Statement

Marine Order 34 (Solid bulk cargoes) 2016 (Order 2016/17)

Authority

1. Subsection 112(4) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the carriage of cargo on a vessel.
2. Subsection 112(5) of the Navigation Act provides that the regulations may provide for the loading, stowing or carriage of cargo in vessels, the unloading of cargo from vessels and the giving of notices related to that loading, stowage, carriage or unloading.
3. Subsection 112(6) of the Navigation Act provides that the regulations may provide for the carriage of dangerous goods.
4. Subsection 119(1) of the Navigation Act provides that the regulations may require notice to a prescribed person, given in a prescribed manner, of intention to ship dangerous goods in certain vessels.
5. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Safety of Life at Sea (SOLAS).
6. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for contravening a provision of the regulations, including providing for the imposition of civil penalties.
7. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
8. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision must or may be made by regulations.
9. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
10. This Order is made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

11. This Order provides for the loading, stowing, carriage and unloading of solid bulk cargoes (other than grain). It gives effect to the general requirements set out in Part A of Chapter VI of SOLAS for the carriage of cargoes (except liquids in bulk and gases in bulk) on vessels and the requirements for the loading, unloading and stowage of solid bulk cargoes set out in Part B of Chapter VI of SOLAS. It also gives effect to Part A-1 of Chapter VII of SOLAS that deals with the carriage of dangerous goods in solid form in bulk on vessels.
12. The Order also gives effect to the International Maritime Solid Bulk Cargoes Code (the IMSBC Code) and the Code of Practice for the Safe Loading and Unloading of Bulk Carriers (the BLU Code).

Overview

13. The Navigation Act implements Australia's obligations under SOLAS. This Order is made under the Navigation Act to give effect to certain requirements of

SOLAS relating to the carriage of solid bulk cargoes by regulated Australian vessels and foreign vessels. The Order gives effect to Parts A and B of Chapter VI relating to the loading, stowage, carriage and unloading of solid bulk cargoes (other than grain) and Part A-1 of Chapter VII of SOLAS relating to the carriage of dangerous goods in solid form in bulk.

14. The Order gives effect to the IMSBC Code as required by those Parts of SOLAS and the BLU Code as referred to in Part B of Chapter VI of SOLAS. The Order also provides for other matters for the Navigation Act in relation to shipping of solid bulk cargoes (other than grain). Requirements for the loading, unloading, stowage and carriage of grain in bulk on regulated Australian vessels and foreign vessels are set out in *Marine Order 33 (Cargo and cargo handling — grain) 2016*.

15. The Order repeals previous *Marine Order 34 (Solid bulk cargoes) 2007*. When the Order commences, Schedule 19 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Order.

Consultation

16. A copy of the draft of this Order was placed on the AMSA website for public comment on 16 September 2016 for a 6 week consultation period. Around 160 stakeholders, including recognised organisations, ship operators, shipping and cargo industry bodies, port authorities, seafarer representative organisations, training organisations and various government agencies were invited to comment. No comments on the draft Order were received.

17. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order have regulatory impacts of a minor nature and no regulation impact statement was required. The OBPR reference number is 16455.

Documents incorporated by reference

18. This Order incorporates by reference parts of the following documents as in force from time to time:

- SOLAS;
- *Marine Order 1 (Administration) 2013*.

Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), that Marine Order is adopted as in force from time to time because it is adopted by reference to its title in the Order.

19. The Order also incorporates by reference the IMSBC Code adopted by International Maritime Organization (IMO) Resolution MSC.268(85) and the BLU Code adopted by IMO Resolution A.862(20). Both of these Codes are incorporated as in force from time to time.

20. The IMSBC Code and BLU Code are freely available from the IMO website at <http://www.imo.org>. Detailed information as to how to navigate the IMO website to access the Codes is available from the Marine Order link at <http://www.amsa.gov.au>.

21. SOLAS is freely available on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>. Information on obtaining copies of any IMO Resolution, IMO document, Marine Order or other document that is mentioned in this Order is available from the Marine Order link at <http://www.amsa.gov.au>.

22. IMO published material may also be purchased from:

International Maritime Organization
4 Albert Embankment, London SE1 7SR
Telephone +44(0)20 7735 7611
Fax +44(0)20 7587 3210
IMO website: <http://www.imo.org>

Commencement

23. This Order commenced on 1 January 2017.

Contents of this instrument

24. Section 1 sets out the name of this Order.

25. Section 1A provides for the commencement of the Order.

26. Section 1B provides that *Marine Order 34 (Solid bulk cargoes) 2007* is repealed.

27. Section 2 states the purpose of the Order, which is to give effect to Parts A and B of Chapter VI of SOLAS, Part A-1 of Chapter VII of SOLAS, the IMSBC Code and the BLU Code and provide for the loading, stowing, carriage and unloading of solid bulk cargoes (other than grain).

28. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.

29. Section 4 sets out definitions of terms used in the Order (other than *competent authority* and *Administration*).

30. Section 5 sets out the interpretation of terms used in the Order and the definition of the terms *competent authority* and *Administration*. Subsection 5(4) relates to compliance with the IMSBC Code. The subsection makes clear that a person who complies with the latest internationally-agreed amendment to the IMSBC Code during the agreed voluntary period for implementation is to be taken as compliant with the Code for the purposes of the Order.

31. Section 6 provides that the Order applies to loading, stowing, carriage and unloading of solid bulk cargoes of regulated Australian vessels and foreign vessels.

32. Section 7 sets out the arrangements for a person to apply for an exemption from loading, trimming, carrying or unloading solid bulk cargo in accordance with a requirement of the IMSBC Code. It adopts the application process in *Marine Order 1 (Administration) 2013* (Marine Order 1) and sets out criteria to ensure an exemption is only issued when safety is assured. Failure by the applicant to comply with any condition on the exemption that applies to the applicant is a strict liability offence and the applicant is also liable to a civil penalty. Similarly, the master of a vessel must keep a copy of the exemption on board during voyages to which the exemption applies. Failure to keep a copy on board in that circumstance is a strict liability offence and also makes the master liable to a civil penalty.

33. Section 8 sets out the arrangements for a person to apply for use of an equivalent (as defined in Marine Order 1). Again, the application process set out in Marine Order 1 is adopted and criteria are provided to ensure safety if approval is given.

34. Section 9 provides for persons to apply to AMSA for an approval for the transport of solid bulk cargo that is mentioned in the IMSBC Code. AMSA may approve the proposed arrangement if satisfied that the arrangement is safe.

35. Section 10 provides for an issuing body to approve a regulated Australian vessel that is a cargo vessel as being specially fitted or specially constructed in accordance with section 7.3.2 of the IMSBC Code. It adopts the application process in Marine Order 1 and requires the application to include the information mentioned in section 7.3.2.4 of the IMSBC Code.

36. Division 2 contains 5 sections and deals with requirements for loading, stowage, carriage and unloading of the cargoes.

37. Section 11 requires solid bulk cargo to be loaded, trimmed and carried on a vessel and unloaded from a vessel in accordance with Parts A and B of Chapter VI of SOLAS, the IMSBC Code, the BLU Code and the Order. If the cargo is dangerous goods in solid form in bulk it must also comply with regulation 7-3 of Chapter VII of SOLAS. Related requirements apply to the master, terminal operators and terminal representatives. Documents necessary to demonstrate compliance with this requirements must be carried on the vessel and made available to an inspector on request.

38. Section 12 provides that solid bulk cargo may be loaded onto a vessel only if the master of the vessel and the terminal representative have agreed on a plan for loading that complies with the BLU Code. The section requires the plan to be lodged with the terminal representative and a copy kept on the vessel. The plan must be made available for inspection by an AMSA inspector on request. The section also provides similar requirements for the unloading of solid bulk cargo.

39. Section 13 provides for the master and the terminal representative to ensure the vessel loading and unloading operations are in accordance with the agreed plan. Provision is made for the suspension of loading or unloading if a limit mentioned in the plan is or is likely to be exceeded.

40. Section 14 provides that loading and carriage of Group A solid bulk cargo (ie cargoes that may liquefy) will be prohibited in certain circumstances. A person taking a vessel to sea, or causing or permitting another person to take the vessel to sea, in breach of subsection (2) commits an offence.

41. Section 15 provides that the master must ensure a copy of the current supplement to the *International Maritime Dangerous Goods Code* (IMDG Code) that includes the *Medical First-Aid Guide for Use in Accidents Involving Dangerous Goods* is on board during carriage of dangerous goods in solid form in bulk and carriage of certain solid bulk cargo.

42. Division 3 contains 4 sections and sets out notice and information requirements.

43. Section 16 provided for notice to be given to AMSA of the intended shipping of solid bulk cargo. It sets out the information that must be given to AMSA in the notice, including any dangerous goods that are to be shipped. A shipper must give a copy of any notice to the master of the vessel who cannot allow certain kinds of solid bulk cargo to be loaded on to the vessel unless the notice is received.

44. Section 17 provides for notice to be given to AMSA by the master of a vessel who intends to arrange for fumigation of a cargo hold. It sets out the information that is to be given to AMSA.

45. Section 18 provides for the shipper of solid bulk cargo to give the master or owner of the vessel on which it is to be loaded certain information specified in the IMSBC Code about the cargo.

46. Section 19 provides for further obligations of the shipper and master in relation to obtaining, giving and receiving certain information about the cargoes.

A master loading the cargo prior to receipt of the information from the shipper is in breach of subsection (2). An offence against subsection (2) is a strict liability offence and a person is liable to a civil penalty for contravening subsection (2).

47. Division 4 contains 2 sections and deals with other matters in relation to the loading, stowage, carriage and unloading of the cargoes.

48. Section 20 provides that an inspector can give any person a notice to desist or take precautions if the person's activity, or failure to do an activity, is causing certain risks during loading, stowage, carriage or unloading of solid bulk cargo.

49. Section 21 prescribes incidents for the definition of marine incident in section 14 of the Navigation Act.

50. Schedule 1 sets out additional requirements to be complied with when shipping different kinds of cargo. Under subsection 11(1) it is an offence not to comply with these requirements.

Statement of compatibility with human rights

51. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

52. The *Navigation Act 2012* (the Navigation Act) implements Australia's obligations under the International Convention for the Safety of Life at Sea (SOLAS). This Order is made under the Navigation Act and gives effect to Parts A and B of Chapter VI of SOLAS relating to the carriage of cargoes and particular provisions relating to solid bulk cargoes. It also gives effect to Part A-1 of Chapter VII of SOLAS that deals with the carriage of dangerous goods in solid form in bulk.

53. Implementation of the requirements under some of those Parts of SOLAS requires giving effect to the *International Maritime Solid Bulk Cargoes Code* (IMSBC Code). The Order also gives effect to the *Code of Practice for the Safe Loading and Unloading of Bulk Carriers* (BLU Code) that is referred to in Part B of Chapter VI of SOLAS.

54. The Order repeals previous *Marine Order 34 (Solid bulk cargoes) 2007*. When the Order commences, Schedule 19 of *Marine Order 4 (Transitional modifications) 2013* ceases to have effect because that schedule modifies the previous Order.

55. The Order also provides other matters for the Navigation Act in relation to shipping of solid bulk cargoes (other than grain) and shipping of dangerous goods in solid form in bulk.

Human rights implications

56. Sections 7, 11 to 16, 18 and 19 of the Order create offences to which strict liability applies. They also create civil penalties. The penalties are low (50 penalty units) and are generally directed at masters and owners of vessels, shippers, terminal representatives and terminal operators.

57. The penalties are protective and preventative in nature. Their objective is to ensure that vessels involved in shipping cargoes are loaded, unloaded and operated safely to protect the vessel, the crew, terminal staff and the environment. Risks include structural damage during loading, loss or reduction of vessel stability during voyages and chemical reactions of cargoes. These risks can all, if not managed correctly, contribute to the capsizing and loss of a vessel.

58. In section 7, the penalties are imposed to ensure that conditions on an exemption are complied with, and that a copy of the instrument of exemption is

carried on board the vessel. The penalties only apply to conditions that apply to the person and their aim is to ensure safe vessel operations.

59. In sections 11 to 14, strict liability is imposed to protect life at sea, to protect the safety of those on land and to protect the marine environment in Australian waters. The offences that ensure compliance with the BLU Code, including compliance with agreed plans for the loading and unloading of solid bulk cargo, are necessary for maritime safety. As the IMO noted in IMO Resolution A.862(20) in which it adopted the BLU Code, a number of accidents have occurred as a result of improper loading and unloading of bulk carriers and following safe loading and unloading practices can prevent such accidents occurring.

60. In section 15, strict liability is imposed to ensure first aid information is readily available on board a vessel carrying specified solid bulk cargoes. This helps ensure seafarer safety and protect life at sea.

61. In section 16, the penalties imposed are to ensure that an AMSA inspector has sufficient notice of the shipping of certain cargoes by warranting that the master of a vessel will not allow loading of the cargo if he or she has not received a copy of the relevant notice, leading to safer vessel operations and protection of the marine environment in Australian waters.

62. Sections 16, 18 and 19 sets out various notice requirements relating to shipping of solid bulk cargo, including dangerous goods, and fumigation of cargo holds. Strict liability is imposed to ensure safe vessel operations and the protection of the marine environment in Australian waters.

63. The criminal penalty provisions in the Order are authorised by paragraph 341(1)(a) of the Navigation Act. The civil penalty provisions in the Order are authorised by paragraph 341(1)(b) of the Navigation Act.

64. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR. Having regard to the objectives of the civil penalty provisions (which are protective and preventative in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

Conclusion

65. AMSA considers that this instrument is compatible with the rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Making the instrument

66. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990*.